

## GROUND FISH ADVISORY SUBPANEL REPORT ON UPDATE ON HUMPBACK WHALE ENDANGERED SPECIES ACT CONSULTATION

The Groundfish Advisory Subpanel (GAP) received a presentation from Mr. Brian Hooper, National Marine Fisheries Service (NMFS), West Coast Region (WCR), Sustainable Fisheries Division and Mr. Robert Markle NMFS, WCR, Protected Resources Division. As noted in the D.6 Situation Summary, under this agenda item, the Pacific Fishery Management Council (Council), its groundfish advisory bodies, and public are being provided an update from NMFS about the status of the ongoing humpback whale re-consultation.

In our previous statements on this topic and, more generally, the Endangered Species Workgroup (ESWG) ([Agenda Item I.4.a, Supplemental GAP Report 1, June 2019](#) and [Agenda Item F.5.a Supplemental GAP Report April 2017](#)), the GAP made several recommendations aimed at improving the effectiveness of the consultation process. Specifically, the GAP stressed (and continues to stress) the importance of early outreach to fishery participants because it is critical to consider fishermen's knowledge and experience when assessing potential impacts to listed species and in scoping and developing potential mitigation or management measures.

Stakeholder engagement should be one of the first steps taken by NMFS in the consultation process. Moreover, as detailed in our June 2019 report, the ESWG should include industry representatives to provide practical advice on recommendations and perspectives developed by the ESWG. As we highlighted in June 2019, the Terms of Reference (TOR) for the ESWG supports the inclusion of industry representatives:

### COMPOSITION:

“The Work Group shall consist of 11 or more members as specified from each entity or category below. The representatives selected to serve on the Work Group shall have appropriate expertise in conservation of the aforementioned species, groundfish fisheries management, or quantitative analysis.

**“Other representatives as determined by the Council. Representatives in this category may be short-term appointments (e.g., one meeting) to address specific issues.”** (emphasis added)

The need for industry involvement is clearly demonstrated by several of the new conservation measures proposed by NMFS ([Agenda Item D.6.a, NMFS Report 1, September 2020](#)). For example, NMFS suggests consideration of a coast-wide Federal fixed-gear logbook without appearing to acknowledge ongoing efforts to develop and implement logbooks. NMFS also suggests that gear configuration characteristics could be tracked through logbooks and/or observers when it would likely be simpler and more effective to engage directly with industry participants during the consultation process. NMFS also “encourage[s] observer coverage at or above historic levels for this sector” without any consideration of the costs of this recommendation nor any consideration of how this information could be collected by fishery participants. NMFS notes the need to “[s]tudy and encourage minimizing the impact of storing sablefish pot/trap gear at-sea;” however, it was reported to the GAP that, while it may occur in other Federal fisheries,

“storage” of pot/trap gear at-sea does not occur in the Pacific coast sablefish fishery. The NMFS report also does not acknowledge incentives that already exist to avoid lost gear, or industry-led efforts to support this goal, such as communication that already occurs within industry to minimize gear conflicts between sectors. Finally, some of the information that NMFS seeks to obtain might already be available from vessels in the Individual Fishing Quota (IFQ) program (that is, from vessels that gear switch) – for example, logbooks and data from observers and electronic monitoring.

The GAP recognizes that the re-consultation process is at an initial stage and that NMFS provided their report to solicit feedback from the Council, its advisors, and the public. The GAP welcomes this engagement; our comments are meant to be informative and to improve the consultation process. To that end, the GAP recommends:

1. The Council urge NMFS to engage with fishery participants early and often during the consultation process and to make coordination with the Council a regular feature of Endangered Species Act consultations; and
2. The Council formally include GAP members or fishery participants on the ESWG by revising their TOR to include at least three fixed gear (one from each state) and one trawl representative who would provide their perspectives and practical advice to the Endangered Species Work Group.

PFMC  
09/10/20